

1  
2  
3  
4  
5  
6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10

11 TRUCK INSURANCE EXCHANGE,

No. C 06-04573 CRB

12 Plaintiff,

**ORDER TO SHOW CAUSE**

13 v.

14 ATLANTIC MUTUAL INS. CO.,

15 Defendant.  
16 \_\_\_\_\_/

17 Plaintiff Truck Insurance Exchange (“Truck”) sued defendant Atlantic Mutual  
18 Insurance Company (“Atlantic”) in California state court for contribution arising from the  
19 parties’ defense of a lawsuit against a joint insured. On July 29, 2006, Atlantic removed the  
20 action to this Court on the basis of diversity jurisdiction; in particular, Atlantic alleged that  
21 Truck is a citizen of California as it is a California corporation and Atlantic is a citizen of  
22 New Jersey and New York.

23 A district court may, and indeed, should sua sponte raise the issue of subject matter  
24 jurisdiction if there is a question. See Galt G/S v. Hapag-Lloyd A.G., 60 F.3d 1370, 1373  
25 (9th Cir. 1995). The Court has discovered that around the time this case was removed to this  
26 Court on the basis of diversity jurisdiction, Truck admitted in a case pending in the United  
27 States District Court for the Western District of Washington that it is not a California  
28 corporation and is instead an unincorporated association (reciprocal inter-insurance  
exchange) enjoying citizenship in every state in which it has a member. Dally Properties,

1 LLC v. Truck Insurance Exchange, 05-0254RSL (Docket No. 170), 2006 WL 2091151  
2 (W.D. Wash. July 25, 2006). In Dally, Truck's true citizenship—which destroyed diversity  
3 jurisdiction and rendered removal improper--was not brought to the district court's attention  
4 until after the court had ruled on several dispositive motions, all of which became null and  
5 void after the court remanded the case to state court for lack of subject matter jurisdiction.  
6 The Court hopes to avoid the same waste of judicial resources here.

7 Accordingly, the parties are ordered to show cause as to how this Court had subject  
8 matter jurisdiction of this case at the time it was removed in light of Truck admission that it  
9 is, or at least at the time of removal was, an unincorporated association and thus a citizen of  
10 every state in which it has a subscriber. The parties must file their written responses on or  
11 before April 10, 2009 and the Court will hear oral argument at 10:00 a.m. on Friday, April  
12 17, 2009. The hearing on the parties' cross motions for summary judgment is VACATED  
13 pending resolution of the jurisdictional issue.

14 **IT IS SO ORDERED.**

15 Dated: April 1, 2009



16 CHARLES R. BREYER  
17 UNITED STATES DISTRICT JUDGE  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28